

EXHIBIT 1

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

ACCENTCARE, INC. and ACCENTCARE OF CALIFORNIA, INC.
AND DOES 1-50,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Sharina McNeal, individually and on behalf of other aggrieved
employees under the Labor Code Private Attorneys General Act of 2004

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED
FILED
ALAMEDA COUNTY

JUN 15 2015

CLERK OF THE SUPERIOR COURT
By Ciceli Johnson
Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court for the State of California County of Alameda
Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Robert Ottinger and Ori Edelstein, 930 Montgomery Street, # 502 San Francisco, CA 94133. 415-262-0096

CASE NUMBER:
(Número del Caso) 15774103

DATE: June 15, 2015
(Fecha)

Leah T. Wilson

Clerk, by
(Secretario)

Ciceli Johnson, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Accentcare of California, Inc.
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

EXHIBIT 2

ENDORSED
FILED
ALAMEDA COUNTY

JUN 15 2015

CLERK OF THE SUPERIOR COURT

By Cicell Johnson Deputy

1 Robert Ottinger (SBN 156825)
2 Ori Edelstein (SBN 268145)
3 THE OTTINGER FIRM, P.C.
4 930 Montgomery Street, #502
5 San Francisco, CA 94133
6 Tel: (415) 262-0096
7 Fax: (415) 520-0555
8 Email: robert@ottingerlaw.com
9 Email: ori@ottingerlaw.com

6 Louis Benowitz (SBN 262300)
7 LAW OFFICES OF LOUIS BENOWITZ
8 9454 Wilshire Boulevard, Penthouse
9 Beverly Hills, California 90212
10 Tel: (310) 844-5141, Fax: (310) 492-4056
11 Email: louis@benowitzlaw.com

10 Attorneys for Plaintiff
11 Sharina McNeal and other aggrieved employees under
12 the Labor Code Private Attorneys General Act of
13 2004

13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF ALAMEDA

15 Sharina McNeal, individually and on behalf of
16 other aggrieved employees under the Labor Code
17 Private Attorneys General Act of 2004

17 Plaintiff,

18 vs.

19 ACCENTCARE, INC., ACCENTCARE OF
20 CALIFORNIA, INC., and DOES 1-50,

21 Defendants.

Case No.

RG 15774103

COMPLAINT FOR:

1. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED

COMPLAINT

BY FAX

1 **PRELIMINARY STATEMENT**

2 1. This is a complaint by Plaintiff Sharina McNeal ("Plaintiff"), on behalf of herself
3 and on behalf of all other similarly aggrieved employees. Plaintiff was employed by Defendant
4 Accentcare, Inc., and Defendant Accentcare of California, Inc. ("Defendants") as an in-home
5 "Care Partner" was misclassified as "exempt" and denied minimum wage compensation for all
6 hours she worked.

7 2. The phrase "Aggrieved Employees," as used in this Complaint, shall collectively
8 refer to all current and former employees of Defendant against whom one or more violations of
9 the Labor Code are alleged to have been committed during the period from April 23, 2014 (i.e.,
10 one year before the date on which Plaintiff gave notice to Defendant of the alleged violations of
11 the Labor Code set forth in this Complaint,) to the date of the final disposition of this action.

12 3. Defendant unlawfully failed to pay minimum wage compensation for all hours
13 worked by Sharina McNeal and all the other Aggrieved Employees, as required by state wage and
14 hour laws. Plaintiff seeks relief for herself and the Aggrieved Employees pursuant to the Private
15 Attorneys General Act of 2004 ("PAGA"), California Labor Code §2699 for restitution of unpaid
16 wages, civil penalties, interest, costs, and attorneys' fees for Defendants' failure to pay all wages
17 due, maintain accurate time records, and provide accurate wage statements.

18 **JURISDICTION**

19 5. Jurisdiction is conferred on this Court because Defendants named herein conduct
20 business in the State of California. Jurisdiction is conferred on this Court as to all causes of
21 action because they arise under state statutory or common law.

22 **THE PARTIES**

23 6. Individual and representative Plaintiff Sharina McNeal resides in California. She
24 was employed by Defendant as an in-home "Care Partner" from May of 2012 until the
25 present. At all relevant times Plaintiff met the definition of an "employee" under all applicable
26 statutes.

27 7. Defendant Accentcare, Inc. is a Delaware Corporation with its corporate
28 headquarters in Dallas, Texas. Defendant provides home care and hospice services. It is

1 authorized to, and does, conduct business in the State of California. At all relevant times,
 2 Defendant met the definition of “employer” under all applicable statutes.

3 8. Defendant Accentcare of California, Inc. is a Delaware corporation with its
 4 corporate headquarters in Dallas, Texas. Defendant Accentcare of California provides home care
 5 and hospice services. It is authorized to, and does, conduct business in the State of California. At
 6 all relevant times, Defendant Accentcare of California, Inc. met the definition of “employer”
 7 under all applicable statutes.

8 PROCEDURAL REQUIREMENTS

9 9. Plaintiffs have complied with the procedures for commencing a civil action
 10 pursuant to Labor Code § 2699.3.

11 10. By letter dated April 23, 2015, Plaintiff gave written notice via certified mail to
 12 both the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
 13 provisions of the Labor Code that Plaintiff alleges to have been violated, including the facts and
 14 theories to support the alleged violations.

15 11. The LWDA has not provided Plaintiff with written notice that it does not intend to
 16 investigate the alleged violations, however thirty-three (33) days have elapsed since the postmark
 17 date of the letter sent to the LWDA.

18 12. All other filing prerequisites have been met.

19 PLAINTIFF’S FACTUAL ALLEGATIONS

20 13. Plaintiff was employed by Defendants as an in-home “Care Partner”.

21 14. Plaintiff began working for Defendants in May of 2012.

22 15. From the start of her employment, Plaintiff was assigned to work 24-hour shifts in
 23 the home of Defendants’ clients.

24 16. Plaintiff was actively working, or on call for the entirety of the 24-hour shift.

25 17. At all times during her shift, Plaintiff was obligated to be ready to respond to the
 26 patient’s needs, and she was not able or allowed to leave the premises.

27 18. Plaintiff was required to sleep on the premises and at no time during Plaintiff’s
 28 shifts did she get five or more hours of uninterrupted sleep. In fact, the longest period of

1 uninterrupted sleep she received was three hours.

2 19. Plaintiff was paid for only 16 hours of work for each 24-hour shift she worked.

3 **FACTUAL ALLEGATIONS COMMON TO THE AGGRIEVED EMPLOYEES**

4 20. Defendants employed Plaintiff, and all the other Aggrieved Employees during the
5 period from April 23, 2014 to the present.

6 21. All of the work that Plaintiff and all the other Aggrieved Employees have
7 performed has been assigned by Defendants and/or Defendants have been aware of all the work
8 the Plaintiff and the Aggrieved Employees have performed.

9 22. Plaintiff and all the other Aggrieved Employees customarily and regularly worked
10 24-hour shifts during which they were actively working or required to be on-call and available to
11 work.

12 23. While on-call, Plaintiff and all the other Aggrieved Employees were required to be
13 available to work and were responsible for caring for the patient as needed.

14 24. While on-call, Plaintiff and all the other Aggrieved Employees were precluded
15 from participating in personal activities such as running errands, shopping, entertaining friends,
16 outings, viewing movies, dinners, and other activities.

17 25. During each 24-hour shift, Plaintiff and all the other Aggrieved Employees
18 customarily and regularly, were obligated to sleep on the premises and did not receive 5 hours of
19 uninterrupted sleep.

20 26. Defendants' policy and practice was to pay all in-home care partners in California
21 for 16 hours for each 24-hour shift worked.

22 27. Plaintiff and all the other Aggrieved Employees were regularly denied
23 compensation for hours worked or on-call.

24 28. Plaintiff and all the other Aggrieved Employees were regularly denied minimum
25 wage compensation in violation of Labor Code §§ 1194, 1197, and 1198.

26 29. Plaintiff and all the other Aggrieved Employees were regularly denied accurate
27 statements of wages, hours worked, rates paid, and gross wages, as required by California Labor
28 Code § 226(a).

FIRST CAUSE OF ACTION

Civil Penalties

(Lab. Code §§ 2698 *et seq.*)

**(By Plaintiff, On Behalf of herself and all the other Aggrieved Employees, Against
Defendants)**

30. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if fully set forth herein.

31. Labor Code §§ 2699(a) and (g) authorizes aggrieved employees, on behalf of themselves and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3 that may, but need not, be brought or maintained as class action pursuant to California Code of Civil Procedure § 382.

32. Plaintiff is informed and believes and thereon alleges that, during the applicable limitations period, Defendants violated Labor Code §§ 226, 1194, and 1197.

33. Plaintiff and all the other Aggrieved Employees, as employees against whom Defendants committed one or more violations of the Labor Code during the applicable limitations period, and/or caused to be committed, are an “aggrieved employee” within the meaning of Labor Code § 2699(c).

34. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff seeks civil penalties for Defendants’ violations of Labor Code §§ 226, 1194, and 1197, against her and all the other Aggrieved Employees during the applicable limitations period.

35. Plaintiff has complied with the procedures for bringing suit set forth in Labor Code § 2699.3. By letter dated April 23, 2015, Plaintiff gave written notice via certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the Labor Code that they allege to have been violated, including the facts and theories to support the alleged violations.

36. Thirty-three (33) days have elapsed since such notification, and therefore pursuant to Labor Code §2699.3(a)(2)(A) Plaintiff has exhausted all administrative remedies.

1 37. Pursuant to Labor Code § 2699(g)(1), Plaintiffs seek an award of reasonable costs
2 and attorneys' fees in connection with her claims for civil penalties on behalf of herself and the
3 Aggrieved Employees

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays that the Court enter judgment in her favor and against
6 Defendant, containing the following relief:

- 7 a. Civil penalties;
8 b. Restitution;
9 c. Pre-judgment interest;
10 d. Post-judgment interest;
11 e. Costs of suit;
12 f. Reasonable attorneys' fees; and
13 g. Such other relief as the Court deems just and proper.

14 **JURY DEMAND**

15 Plaintiff, on behalf of herself and all other Aggrieved Employees under the Labor Code
16 Private Attorneys General Act of 2004, hereby demand a trial by jury on all issues of fact and
17 damages stated herein.

18
19 Dated: June 12, 2015

THE OTTINGER FIRM, P.C

20
21 BY: 

22 ROBERT OTTINGER
23 ORI EDELSTEIN
LOUIS BENOWITZ

24 Attorneys for Plaintiff
25 Sharina McNeal and other aggrieved
26 employees under the Labor Code Private
27 Attorneys General Act of 2004
28

EXHIBIT 3

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): The Ottinger Law Firm Ori Edelstein State Bar No. 268145 Robert Ottinger State Bar No. 156825 930 Montgomery Street San Francisco, CA 94133 TELEPHONE NO.: 415-262-0096 FAX NO.: 212-571-0505 ATTORNEY FOR (Name): Sharina McNeal		FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY JUN 15 2015 CLERK OF THE SUPERIOR COURT By <u>Cecilia Johnson</u> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davison Courthouse		
CASE NAME: McNeal v. Accentcare, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☐ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify):

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date:

Ori Edelstein

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal.

Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

Superior Court of California, County of Alameda



Notice of Assignment of Judge for All Purposes

Case Number: RG15774103

Case Title: McNeal VS Accentcare, Inc

Date of Filing: 06/15/2015

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Rule 3.734 of the California Rules of Court and Title 3 Chapter 2 of the Local Rules of the Superior Court of California, County of Alameda, this action is hereby assigned by the Presiding Judge for all purposes to:

Judge:	Stephen Kaus
Department:	23
Address:	Administration Building 1221 Oak Street Oakland CA 94612
Phone Number:	(510) 267-6939
Fax Number:	0
Email Address:	Dept.23@alameda.courts.ca.gov

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

Please note: In this case, any challenge pursuant to Code of Civil Procedure section 170.6 must be exercised within the time period provided by law. (See Code Civ. Proc. §§ 170.6, subd. (a)(2) and 1013.)

NOTICE OF NONAVAILABILITY OF COURT REPORTERS: Effective June 4, 2012, the court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201 (probate). Parties may arrange and pay for the attendance of a certified shorthand reporter. In limited jurisdiction cases, parties may request electronic recording.

Amended Local Rule 3.95 states: "Except as otherwise required by law, in general civil case and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter."

You may schedule case management hearings, law & motion hearings and other calendar events with Department 23 by e-mail. The use of e-mail is not a substitute for filing pleadings or filing other documents. You must provide copies of all email communications to each party (or party's attorney if the party is represented) at the same time that you send the

e-mail to the Court. You must show that you have done so in your e-mail. Courtesy copies of all moving, opposition and reply papers should be delivered as required by Local Rule 3.30(c).

IT IS THE DUTY OF EACH PLAINTIFF AND CROSS COMPLAINANT TO SERVE A COPY OF THIS NOTICE IN ACCORDANCE WITH LOCAL RULES.

General Procedures

Following assignment of a civil case to a specific department, all pleadings, papers, forms, documents and writings can be submitted for filing at either Civil Clerk's Office, located at the René C. Davidson Courthouse, Room 109, 1225 Fallon Street, Oakland, California, 94612 or the Hayward Hall of Justice, 24405 Amador Street, Hayward, California, 94544. All documents, with the exception of the original summons and the original civil complaint, shall have clearly typed on the face page of each document, under the case number, the following:

ASSIGNED FOR ALL PURPOSES TO
JUDGE Stephen Kaus
DEPARTMENT 23

All parties are expected to know and comply with the Local Rules of this Court, which are available on the Court's website at:

<http://www.alameda.courts.ca.gov/courts/rules/index.shtml> and with the California Rules of Court, which are available at www.courtinfo.ca.gov.

Parties must meet and confer to discuss the effective use of mediation or other alternative dispute processes (ADR) prior to the Initial Case Management Conference. The court encourages parties to file a "Stipulation to Attend ADR and Delay Initial Case Management Conference for 90 Days". Plaintiff received that form in the ADR information package at the time the complaint was filed. The court's Web site also contains this form and other ADR information. If the parties do not stipulate to attend ADR, the parties must be prepared to discuss referral to ADR at the Initial Case Management Conference.

Parties should check DOMAIN for tentative case management orders, which should be posted by noon the court day before the case management conference. Tentative rulings for case management conferences can be viewed in the Register of Actions, NOT UNDER TENTATIVE RULINGS. The tentative ruling will become the order of the court if there is no appearance by any party. Any party intending not to appear and thereby submit to a tentative ruling should contact all other parties before the hearing and may reach agreement that all counsel will submit to the tentative ruling or that one party will speak for itself and others.

Schedule for Department 23

The following scheduling information is subject to change at any time, without notice. Please contact the department at the phone number or email address noted above if you have questions.

- Trials generally are held: Mon through Thurs from 8:45 am to 1:15 pm. A Readiness Conference is held a week before the trial date at 2:00 pm. This Conference is the first day of trial for applying Local Rule 3.35 and the discovery cut-off periods in the CCP.
- Case Management Conferences are held: Wednesdays at 3:00 p.m. In Case Management Statements, please inform the court of (1) the status of the case, (2)

what counsel believes should occur at the Case Management Conference and (3) when the case will be ready for ADR or trial.

- Law and Motion matters are heard: Tuesdays and Thursdays at 3:00 p.m. The procedure for contesting tentative law and motion orders is as set out in Local Rule 3.30(d) and California Rules of Court 3.1308(a)(1).
- Settlement Conferences are heard: Settlement Conferences for matters assigned to Department 23 will generally be referred to Department 14 (Judge Grillo) or Department 108 (Judge Herbert).
- Ex Parte matters are heard: Tuesdays and Thursdays at 3:00 p.m.
- Telephonic appearances through Court Call are encouraged for routine matters and will be accommodated to the fullest extent possible. However, for significant contested substantive motions, counsel are requested to appear in person if possible. Counsel appearing by telephone are often unaware of what is occurring in the courtroom and it is extremely difficult for a court reporter to accurately transcribe the proceedings.

Law and Motion Procedures

To obtain a hearing date for a Law and Motion or ex parte matter, parties must contact the department as follows:

- Motion Reservations
Email: Dept.23@alameda.courts.ca.gov
- Ex Parte Matters
Email: Dept.23@alameda.court.ca.gov

Tentative Rulings

The court may issue tentative rulings in accordance with the Local Rules. Tentative rulings will become the Court's order unless contested in accordance with the Local Rules. Tentative rulings will be available at:

- Website: www.alameda.courts.ca.gov/domainweb, Calendar Information for Dept. 23
- Phone: 1-866-223-2244

Dated: 06/16/2015

Facsimile

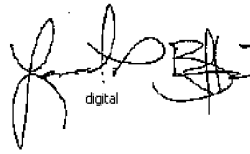

Presiding Judge,
Superior Court of California, County of Alameda

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown on the attached Notice of Initial Case Management Conference and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 06/17/2015

By

A handwritten signature in black ink, appearing to be "R. J. [unclear]", is written over a horizontal line. The word "digital" is printed in small text below the signature.

Deputy Clerk

EXHIBIT 4

The Ottinger Law Firm
Attn: Edelstein, Ori
930 Montgomery Street
#502

San Francisco, CA 94133 _____

Superior Court of California, County of Alameda

McNeal

Plaintiff/Petitioner(s)

VS.

Accentcare, Inc

Defendant/Respondent(s)

(Abbreviated Title)

No. RG15774103

NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER

Unlimited Jurisdiction

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD.

Notice is given that a Case Management Conference has been scheduled as follows:

Date: 01/11/2016 Time: 03:00 PM	Department: 23 Location: Administration Building Fourth Floor 1221 Oak Street, Oakland CA 94612 Internet: http://www.alameda.courts.ca.gov	Judge: Stephen Kaus Clerk: Courtroom Clerk RCD Clerk telephone: (510) 267-6939 E-mail: Dept.23@alameda.courts.ca.gov Fax: 0
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ORDERS

1. You must:
 - a. **Serve** all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (CRC 3.110(b));
 - b. **Give notice** of this conference to any party not included in this notice and file proof of service;
 - c. **Meet and confer**, in person or by telephone, to consider each of the issues identified in CRC 3.724 no later than **30** calendar days before the date set for the Case Management Conference;
 - d. **File and serve** a completed Case Management Statement (use of Judicial Council Form CM-110 is mandatory) at least **15** days before the Case Management Conference (CRC 3.725)*
2. If you do not follow the orders above, you are hereby ordered to show cause why you should not be sanctioned under CRC 2.30. The hearing on the Order to Show Cause re: Sanctions will be at the same time as the Case Management Conference. Sanctions may include monetary sanctions and any other sanction permitted by law, including striking pleadings or dismissing the action.
3. You are further ordered to appear in person† (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
4. The Direct Calendar Judge will issue orders at the conclusion of the conference that should include:
 - a. Referring to ADR and setting an ADR completion date
 - b. Dismissing or severing claims or parties
 - c. Setting a trial date.

* Case Management Statements may be filed by E-delivery, by submitting directly to E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to **Direct Calendar Departments** at <http://apps.alameda.courts.ca.gov/domainweb>.

†Telephonic appearances at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties may make arrangements by calling 1-888-882-6878, or faxing a service request to 1-888-882-2946. This service is subject to charges by the vendor.

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice of Hearing by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 06/17/2015.

By



digital

Deputy Clerk

EXHIBIT 5

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): The Ottinger Firm Ori Edelstein, State Bar No. 268145; Robert Ottinger, State Bar No. 156825 930 Montgomery Street San Francisco, CA 94133 TELEPHONE NO.: 415-262-0096 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Sharina McNeal		FILED BY FAX MC-040 ALAMEDA COUNTY July 01, 2015 CLERK OF THE SUPERIOR COURT By Amrit Khan, Deputy CASE NUMBER: RG15774103	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street, #109 MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davison Courthouse			
PLAINTIFF/PETITIONER: Sharina McNeal DEFENDANT/RESPONDENT: Accentcare Inc., Accentcare of California, Inc.		CASE NUMBER: RG 15774103 JUDICIAL OFFICER:	
NOTICE OF CHANGE OF ADDRESS OR OTHER CONTACT INFORMATION		DEPT.:	

1. Please take notice that, as of (date):

- ☐ the following self-represented party or
- ☒ the attorney for:
- a. ☒ plaintiff (name): **Sharina McNeal**
 - b. ☐ defendant (name):
 - c. ☐ petitioner (name):
 - d. ☐ respondent (name):
 - e. ☐ other (describe):

has changed his or her address for service of notices and documents or other contact information in the above-captioned action.

☐ A list of additional parties represented is provided in Attachment 1.

2. The new address or other contact information for (name): **The Ottinger Firm**

is as follows:

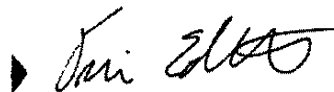
- a. Street: **535 Mission Street, 14th Floor**
- b. City: **San Francisco**
- c. Mailing address (if different from above):
- d. State and zip code: **CA 94105**
- e. Telephone number: **415-262-0096**
- f. Fax number (if available):
- g. E-mail address (if available):

3. All notices and documents regarding the action should be sent to the above address.

Date: **July 1, 2015**

Ori Edelstein

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

Page 1 of 2

MC-040

PLAINTIFF/PETITIONER: Sharina McNeal	CASE NUMBER: RG 15774103
DEFENDANT/RESPONDENT: Accentcare Inc., Accentcare of California, Inc.	

PROOF OF SERVICE BY FIRST-CLASS MAIL**NOTICE OF CHANGE OF ADDRESS OR OTHER CONTACT INFORMATION**

(NOTE: This page may be used for proof of service by first-class mail of the Notice of Change of Address or Other Contact Information. Please use a different proof of service, such as Proof of Service—Civil (form POS-040), if you serve this notice by a method other than first class-mail, such as by fax or electronic service. You cannot serve the Notice of Change of Address or Other Contact Information if you are a party in the action. The person who served the notice must complete this proof of service.)

1. At the time of service, I was at least 18 years old and not a party to this action.
2. I am a resident of or employed in the county where the mailing took place. My residence or business address is (specify):
401 Park Avenue South, 9th Floor
New York, NY 10016
3. I served a copy of the *Notice of Change of Address or Other Contact Information* by enclosing it in a sealed envelope addressed to the persons at the addresses listed in item 5 and (check one):
 - a. ☒ deposited the sealed envelope with the United States Postal Service with postage fully prepaid.
 - b. ☐ placed the sealed envelope for collection and for mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. The *Notice of Change of Address or Other Contact Information* was placed in the mail:
 - a. on (date): July 1, 2015
 - b. at (city and state): New York, NY
5. The envelope was addressed and mailed as follows:

<ol style="list-style-type: none">a. Name of person served: Max C Fischer, Esq Street address: 555 W. 5th Street, 40th Floor City: Los Angeles State and zip code: CA 90013b. Name of person served: Street address: City: State and zip code:	<ol style="list-style-type: none">c. Name of person served: Robert Kane Street address: 620 Newport Center Drive, Suit 200 City: Newport Beach State and zip code: CA 92660d. Name of person served: Street address: City: State and zip code:
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☐ Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 1, 2015

Krista Pontzer

(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

EXHIBIT 6

ENDORSED
FILED
ALAMEDA COUNTY

JUL 15 2015

CLERK OF THE SUPERIOR COURT
By Ciceli Johnson
Deputy

Robert J. Kane (SBN 50856)
rkane@stuartkane.com
STUART KANE LLP
620 Newport Center Drive, Suite 200
Newport Beach, CA 92660
Telephone: (949) 791-5127
Facsimile: (949) 791-5227

Max C. Fischer (SBN 226003)
mfischer@sidley.com
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, California 90013-1010
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

Angela C. Zambrano (Texas Bar No. 24003157)
angela.zambrano@sidley.com
SIDLEY AUSTIN LLP
2001 Ross Avenue, Suite 3600
Dallas, Texas 75201
Telephone: (214) 981-3405
Facsimile: (214) 981-3400

Attorneys For Defendants
ACCENTCARE, INC. and ACCENTCARE OF
CALIFORNIA, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

SHARINA McNEAL, individually and on
behalf of other aggrieved employees under the
Labor Code Private Attorneys General Act of
2004,

Plaintiff,

vs.

ACCENTCARE, INC., ACCENTCARE OF
CALIFORNIA, INC., and DOES 1 - 50,

Defendants.

) Case No. RG 15774103

) Assigned to: Honorable Stephen Kaus

) **DEFENDANTS' ANSWER AND**
) **AFFIRMATIVE DEFENSES**

) Complaint Filed: June 15, 2015

AccentCare, Inc. and AccentCare of California, Inc. (together, "Defendants") generally deny
each and every allegation of Plaintiff's complaint.

AFFIRMATIVE DEFENSES

Defendants state the following facts as separate affirmative defenses to Plaintiff's complaint:

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. The claims asserted by Plaintiff are barred in whole or in part by the one-year statute of limitations set forth in California Code of Civil Procedure § 340(a).
3. Plaintiff is not entitled to any award under Labor Code § 2699(g)(1) because a good faith dispute exists as to the wages allegedly owed, such that Defendants cannot be held to have failed to comply with the requirements of the Labor Code.
4. Plaintiff is not entitled to any award under Labor Code § 2699(g)(1) because Defendants did not fail to comply with the compensation provisions of the Labor Code, but acted in good faith and had reasonable grounds for believing they were not violating provisions of the Labor Code.
5. The recovery sought by Plaintiff would result in an award that is unjust, arbitrary and oppressive, or confiscatory to Defendants under Labor Code § 2699(e)(2) and otherwise does not comport with the US and California Constitutions.
6. Defendants do not allege or admit that they bear the burden of proof with any of the foregoing defenses, nor do Defendants assume the burden of proof.
7. Plaintiff is required to arbitrate her claims alleged in the Complaint on an individual basis, and Defendants reserve their right, and intend, to seek judicial relief compelling her to do the same.
8. Defendants reserve and assert all affirmative defenses available under any applicable law. Defendants presently lack knowledge or information upon which to form a belief as to whether they may have other, as yet unstated, defenses available. Defendants reserve the right to supplement this Answer and to assert additional defenses or other defenses if discovery indicates that they would be appropriate.

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///

///

1 Dated: July 15, 2015

2 STUART KANE LLP
3 SIDLEY AUSTIN LLP

4 BY: 

5 Robert J. Kane
6 Max C. Fischer
7 Angela C. Zambrano
8 *Attorneys for Defendants*
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CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing Defendants' Answer and Affirmative Defenses was served on the following counsel of record by U.S. mail on July 15, 2015:

Robert Ottinger (SBN 156825)
robert@ottingerlaw.com
ori@ottingerlaw.com
Ori Edelstein (SBN 268145)
THE OTTINGER FIRM, P.C.
930 Montgomery Street, #502
San Francisco, CA 94133
Telephone: (415) 262-0096
Facsimile: (415) 520-0555

Louis Benowitz (SBN 262300)
louis@benowitzlaw.com
LAW OFFICES OF LOUIS BENOWITZ
6454 Wilshire Boulevard, Penthouse
Beverly Hills, CA 90212
Telephone: (310) 844-5141
Facsimile: (310) 492-4056

Attorneys for Plaintiff Sharina McNeal

By:



Robert J. Kane
Max Fischer
Attorneys for Defendants